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### Graham Virgo, Principles of the Law of Restitution

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across the Empire. But he does not delve into the possible implications of this fact. So what happened to Roman law in Wales after the first half of the fifth century? The question cannot, I suspect, be answered, but a critical exploration of the issue would have been welcome. (For a recent study of the *Reichsrecht/Volksrecht* debate, see Kaius Tuori's chapter in John Cairns and Paul du Plessis (eds), *Beyond Dogmatics: Law and Society in the Roman World* (2007).)

Professor Watkin continues the chronological account down to the present day. This book is a history not of "Welsh law" but of the law in Wales. Professor Watkin is not trying to invent a nationalist myth. His work is objective and scholarly, and even if it may appear a slightly quirky enterprise, it was worth doing. Though it may be true that one cannot really speak of Welsh law or of a Welsh legal system, that may be changing, and the very fact that a book like this now appears may say something about the principality's juridical future: the categories of historiography are themselves a part of the cultural, political and sociological flow of human affairs.

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**Graham Virgo, THE PRINCIPLES OF THE LAW OF RESTITUTION**

Oxford: Oxford University Press ([www.oup.com](http://www.oup.com)), 2nd edn, 2006. lxi + 785 pp.  
ISBN 9780199298501. £80.

The second edition of Graham Virgo's treatment of the English law of restitution provides, in the tradition of the first, sufficient by way of theoretical grounding as well as of the treatment of practical issues to interest both academic and practitioner. Virgo's explanation of the law is always relevant, and his analysis of his subject matter is aided by sensible subdivisions. He is careful to explain the essential components of different types of restitutionary claim, leaving the reader in no doubt as to what is required by the courts. There is an extensive bibliography, and excellent references to other academic works and theory in the footnotes, as well as to a range of Commonwealth precedent. All of this makes for a commendable achievement.

The continued utility of works on a remedial subject such as restitution, as opposed to one on unjust enrichment, might be questioned by some. Virgo's justification is twofold. First, "by grouping cases together which are concerned with the same legal issues, common principles can be identified which assist in the better understanding and prediction of the law". Second, restitution "forces us to make connections which might otherwise be ignored." Such justifications may not convince everyone. It is doubtful, for instance, whether it is helpful to call restitution either an "independent body of law" or a "legal category", as Virgo does. On the contrary, as a remedy, restitution is entirely dependent upon the causes of action which give rise to it. Moreover, there is a danger that some of the "connections which might otherwise be ignored" are connections which may themselves ignore, or fail properly to take account of, differences stemming from the different causes of action which give rise to the single remedy. This is not to say that there is no value in works treating of remedies, but it ought to be recognised (rather than flatly contradicted) that such works concern dependent legal subjects.

As for unjust enrichment itself, Virgo explains (at 9) that "the enrichment must have been received in circumstances of injustice, meaning that the claim falls within one of the recognised grounds of restitution". For Virgo, an enrichment can only be unjust in English law if the circumstances fit one of the individual grounds for restitution, in other words if the specific formula for restitution is recognised by the law. This feature of English law marks its system out, in Virgo's mind, as one where unjust enrichment plays a formulaic rather than a normative role, a description which identifies Virgo as a supporter of the casuistic, almost Pharisaic, approach to the development of English law: what matters is reciting the right legal wording or formula,

rather than uniting the law under any overarching, principled superstructure. It is unsurprising therefore to find that Virgo is not a supporter of the *sine causa* approach to enrichment supported by Peter Birks in his remarkable *volte-face* shortly before his death.

While Birks's change of heart was certainly controversial, Virgo's attack on the *sine causa* approach to enrichment lacks persuasiveness. Setting out five counter-arguments (at 128-130), he first asserts that the English authorities do not compel us to adopt a Birksian view. True, but nor did they compel English law to accept a body of law called restitution at all.

Second, Virgo argues that in *sine causa* systems the defendant is forced to justify his retention of a benefit. In fact, this is not a wholly accurate description of all Civilian or even mixed systems which adopt a *sine causa* approach to enrichment law. Virgo is describing an "unjustified unless" approach to enrichment, one under which a defendant must justify why it should retain an enrichment, yet he omits to mention the alternative "unjustified if" approach under which the claimant must make out grounds for restoration. A *sine causa* system is quite able to place the burden on the claimant, thereby adopting an "unjustified if" approach, while yet recognising that the general criterion for describing an enrichment as "unjustified" is whether its retention lacks any legal basis. This is arguably so for Scotland, as I have argued elsewhere ("Unjustified enrichment in Scots law twenty years on: where now?" 2006 *Restitution Law Review* 1).

Third, Virgo asserts that a *sine causa* approach would undermine the certainty of receipt of benefits. As with the previous point, this need not be so in systems adopting an "unjustified if" approach.

Fourth, adopting a *sine causa* approach would, Virgo says, oversimplify English law. That need not be the case; systems operating a *sine causa* approach can still have a highly developed taxonomy, as German Law demonstrates.

Last, a *sine causa* approach would cause unnecessary confusion and uncertainty. Need that be so? Surely adding a unifying principle would rather make more sense out of the existing confused and piecemeal approach of English law. Niall Whitty and Hector MacQueen have demonstrated that this may be so for Scottish law in their respective re-workings of the Scottish authorities within a *sine causa* framework: see MacQueen, *Unjustified Enrichment* (2004); Whitty, "Rationality, nationality and the taxonomy of unjustified enrichment", in D Johnston and R Zimmermann (eds), *Unjustified Enrichment: Key Issues in Comparative Perspective* (2002).

These remarks are not intended to suggest that this is not an impressive, scholarly and well-written work, for it is. If one accepts Virgo's premise that English restitution law continues to be a valuable independent body of law, that it should continue to develop in a piecemeal fashion, and that an overarching principle of unjustified enrichment should neither found a cause of action in itself nor depend for its unjustified element upon a concept of "absence of basis", then one will find little to criticise in this work.

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**Lilian Edwards and Anne Griffiths, FAMILY LAW**

Edinburgh: W Green and Son Ltd ([www.wgreen.co.uk](http://www.wgreen.co.uk)), 2nd edn, 2006. 573 pp.  
ISBN 0 4140 1395 6. £ 36.

Since the first edition was published in 1996, there has been a great deal of change in this area of the law. With the introduction of the Human Rights Act 1998, the Civil Partnership Act 2004 and the Family Law (Scotland) Act 2006, to name but a few, this edition had a lot to catch up on. It does so in an accurate and engaging manner. Coverage includes parental rights and responsibilities, children in care, the hearings system, marriage and civil partnership, including